

No. 16,096

United States Court of Appeals
For the Ninth Circuit

JOSEPH F. BLAYLOCK,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORLEANS VENEER AND LUMBER Co., a
Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeals from the United States District Court for the
Northern District of California,
Southern Division.

Honorable Michael J. Roche, United States District Judge.

APPELLANT JOSEPH F. BLAYLOCK'S OPENING BRIEF.

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STATEMENT OF CASE.

This is an appeal from the judgment of the District Court for the Northern District of California, Southern Division, in which the District Court re-

formed a Homestead Patent No. 822606 so as to change a legal description of such patent from a fractional portion of Section 34, Township 13 North, Range 6 East, H.M., in Siskiyou County, California (hereinafter referred to as Section 34) to a fractional portion of Sections 27 and 28, Township 13 North, Range 6 East, H.M., (hereinafter referred to as Sections 27 and 28; see Tr. pp. 46-47; p. 42).

The facts as set forth in the findings are the facts for the purposes of this appeal. In substance they are as follows: Homestead Patent No. 822606 was originally issued to one John Patterson in 1921, and the land described in such patent was in Section 34. This land was assessed and taxed by the State of California, and by the legal description of Section 34 was deeded to the State of California in 1943 for non-payment of taxes pursuant to California Revenue and Taxation Code, Section 3520. Then in 1946 the State of California deeded the same land described in Homestead Patent 822606, which was the description of the land in Section 34, to Defendant Hyrum S. Sims, the predecessor in interest to Appellant Blaylock. Thereafter, defendant Sims deeded the same land described in Section 34, to appellant Blaylock.

The sole question raised by appellant Blaylock in this appeal is the legal significance of the tax sale to the State of California, and the sale from the State of California to defendant Sims. It is thus the contention of appellant Blaylock that:

(a) That the State of California was a bona fide purchaser for value of the land sought to be reformed

and therefore any subsequent sale by the State of California cuts off the United States' right to reformation.

(b) That the purchase by Hyrum S. Sims from the State of California of the patent sought to be reformed was a sale to a bona fide purchaser for value and therefore cut off the equities of the United States to the right of reformation.

(c) That the State of California has a right to rely on the regularity of patents issued by the United States and does have a right and jurisdiction to tax lands covered by patents issued by the United States.

(d) That a tax sale regularly held pursuant to California law eliminates all equities of all predecessors in interest to the defaulting tax payer and all lien holders of the defaulting tax payer including the right of the United States to procure a reformation of the original patent.

ARGUMENT.

I.

IF EITHER THE STATE OF CALIFORNIA OR DEFENDANT SIMS, OR BOTH, WERE BONA FIDE PURCHASERS FOR VALUE OF THE LAND DESCRIBED IN PATENT NO. 822606, THAT IS THE LAND IN SECTION 34, THEN THE RIGHT TO REFORMATION BY THE UNITED STATES HAS BEEN CUT OFF AND CANNOT ARISE AGAIN BY REASON OF THE CONVEYANCE FROM DEFENDANT SIMS TO APPELLANT BLAYLOCK.

Appellant submits that it is well settled that a right of reformation is cut off once there is a conveyance to a bona fide purchaser for value. *Sherwood v. Robertson*, 48 Cal. App. 208, 191 Pac. 972 (1st Dist.

1920); *United States v. Payson*, Fed. Cas. No. 16,016, 1 C. L. J. 325 (1863). And we further submit that it is a further fundamental principle that once the right of reformation has been cut off by a sale to a bona fide purchaser for value, it does not arise again because such bona fide purchaser might sell to another purchaser who has knowledge of the error or mistake which would have entitled the original grantor to reformation had reformation been sought prior to the time of the conveyance to such bona fide purchaser. *American Mortgage Company v. O'Hara*, 56 Fed. 278 (9th Cir. 1893), *Rutgers v. Kingsland*, 7 N.J.Eq. 178 (1848).

II.

THE STATE OF CALIFORNIA AND DEFENDANT HYRUM S. SIMS WERE BONA FIDE PURCHASERS FOR VALUE OF THE LAND DESCRIBED IN SECTION 34 AND THEREFORE THE RIGHT TO REFORMATION OF THE ORIGINAL HOMESTEAD PATENT NO. 822606 HAS BEEN CUT OFF.

The United States stipulated that in the conveyance of real estate in Section 34 to the State of California and in the conveyance by the State of California to Hyrum S. Sims that the taxing procedure was regular and that the State of California had no knowledge at either time of any misdescription of such patent (Tr. p. 55). Thus by the stipulation the United States has acknowledged that the State of California would have been a bona fide purchaser for value if it was in fact a "purchaser". At the outset it was the position of the United States that a tax

deed conveyed only such interest as the tax payer had in the land, and the United States had originally cited the case of *Syme v. Warden*, 114 Cal. App. 707 as an authority for such a proposition. However, the case of *Syme v. Warden*, *supra*, was expressly disapproved in the case of *Helvey v. Sax*, 38 C. 2d 21, 237 P. 2d 269 where the Supreme Court of California stated (page 24) that the statement in the case of *Syme v. Warden* that the tax deed only conveys such interest as the tax payer had in the land was inconsistent with the cases and the statutes controlling and was expressly disapproved. In the case of *Helvey v. Sax*, *supra*, the Court went on to state that a tax deed conveys not merely the title the person who is assessed had, but a new and complete title under an independent grant from the State.

In the case of *Merchants Finance Corporation v. Kuchel*, 83 C.A. 2d 579, 189 P. 2d 513 (3rd Dist. 1948) the court stated:

“There is a conflict of authorities in other jurisdictions regarding the nature of the title which is acquired by the deed to the state for delinquent taxes. Some authorities hold that the state thereby acquires only an inchoate title, which may subsequently become absolute by failure of the owner to redeem the property as provided by statute . . . But, in California, a different rule now prevails. It is now definitely determined in this state that upon execution of the deed to the state for delinquent taxes, the property owner forfeits all rights in the property except the privilege of redeeming it at any time before the state disposes of it.”

Therefore, since the United States has already stipulated (page 55) that the taxing procedures were regular and that the State of California had no knowledge of any misdescription of any patent and further, since Mr. Sims testified that he had no knowledge of any misdescription of such patent at the time he purchased the property at the tax sale (Tr. p. 60), the sale in 1943 to the State of California of the property in Section 34, pursuant to Revenue and Taxation Code of the State of California, Section 3520, was a conveyance to a bona fide purchaser for value and cut off all equities including the right of reformation in the United States. Further, the subsequent sale in 1946 by the State of California to Defendant Hyrum S. Sims, pursuant to Revenue and Taxation Code, Sections 3710 et seq., was likewise another conveyance for a bona fide purchaser for value and cut off any equity of reformation in the United States.

III.

THE STATE OF CALIFORNIA DID HAVE JURISDICTION TO TAX THE PROPERTY IN SECTION 34.

By way of anticipation of the argument of the United States, appellant respectfully submits that the only factor which could defeat his title to the property in Section 34 would be the lack of jurisdiction in the State of California to tax the property therein. It was upon this basis that the trial court decided in favor of the United States and we assumed it will be upon

this basis that the United States will advance arguments against such jurisdiction.

In the case of *U.S. v. Stinson*, 197 U.S. 200 (1905), the Supreme Court of the United States held that there is a great presumption in favor of the regularity of patents, that they are issued correctly and that third persons have a right to rely upon this presumption because of the great importance of stability of deeds, and that therefore, the court will protect bona fide purchasers for value against any rights which the United States might have to cancel or reform such patents. Such being the case since there is a presumption as to the regularity of such patent, and since a bona fide purchaser for value can cut off the right of the United States to either cancel a patent or reform a patent, then the grant by the United States must be a grant of legal title to the property described in the patent. If there were no grant of legal title when a patent was either mistakenly described or fraudulently procured, it would be impossible for a bona fide purchaser to cut off the rights of the United States (Cf. Cases on negotiable instruments as to void instruments and voidable instruments). Therefore, since legal title must have been granted to John Patterson in Section 34 by Homestead Patent No. 822606, then there must be jurisdiction in the State of California to tax such land for the State of California has jurisdiction to tax any land or property in which an individual other than the United States has a legal interest. (Cf. *City of Detroit v. Murray Corporation of America*, 355 U.S. 489, 78 S. Ct. 458 (1958).)

CONCLUSION.

For the above reasons appellant Blaylock respectfully submits that the trial court erred in the matter set forth in paragraphs 1, 2, 3 and 4 of such judgment together with that portion of such judgment which awarded costs of suit against appellant Blaylock, and appellant respectfully requests that the judgment of the trial court be reversed and that title to the property described in Section 34 be quieted in appellant Blaylock as against the United States.

Dated, Yreka, California,

April 29, 1959.

Respectfully submitted,

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Joseph F. Blaylock.